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5/16/11

LEASE

This Lease ("Lease") is made and entered into as of the 26th day of May, 2011 by and between the City of Fresno, a California municipal corporation ("City"), and The Regents of the University of California ("Tenant").

RECITALS

WHEREAS, City owns improved property located at 1944, 1936 and 1750 N. Winery Avenue in Fresno, California, Assessor's Parcel Number 494-291-07T, more particularly described on **Exhibit A** attached hereto (the "Property") which is known as "Reedy Park;" and

WHEREAS, Tenant desires to lease from City the south end of the Property (approximately 1.2 acres) to maintain a demonstration garden known as the "Garden of the Sun" (depicted on **Exhibit B**) through its University of California Master Gardener Program; and

WHEREAS, Tenant (operating through University of California Cooperative Extension, Fresno County) had previously installed and maintained such demonstration garden with the permission of City's previous tenant ("The Discovery Center") of the Property for approximately eighteen years; and

WHEREAS, Tenant acknowledges that the improvements made to the Property by Tenant prior to the Effective Date are the property of City upon the Effective Date; and

WHEREAS, Tenant requires a separate entrance for its use and will fence the Garden of the Sun in accordance with this Lease to separate the Tenant's activities from the balance of the Property and provide for such separate entrance gate; and

WHEREAS, the facilities and the services offered by Tenant have proven to be of great benefit to the citizens of the City of Fresno and its environs, through the education of children and adults; and

WHEREAS, City and Tenant agree that City will lease to Tenant the portion of the Property known as the Garden of the Sun, more particularly described on **Exhibit D** attached hereto (the "Leased Premises"), subject to the terms and conditions of this Lease.

AGREEMENT

NOW, THEREFORE, in consideration of the above recitals, which recitals are contractual in nature, and of the covenants, conditions, and promises hereinafter contained, to be kept and performed by the respective parties, it is mutually agreed as follows:

1. EFFECTIVE DATE AND TERM OF LEASE

(a) City hereby leases to Tenant and Tenant hereby leases from City the Leased Premises, subject to the terms, covenants and conditions hereinafter set forth.

(b) This Lease shall be for a term of 10 years commencing on May 26, 2011 ("Effective Date") and ending at 11:59:59 p.m. on May 25, 2021, unless earlier terminated in accordance with the provisions of this Lease. Upon the expiration or earlier termination of this

Lease, at Tenant's sole cost and expense, Tenant shall remove all of Tenant's personal property and all debris and waste material resulting from Tenant's activities. Except for ordinary wear and tear and any improvements made to the Leased Premises by City or Tenant pursuant to this Lease, Tenant shall repair and restore the Leased Premises to the condition that existed prior to the Effective Date. Tenant shall repair and restore each improvement made to the Leased Premises by City or Tenant pursuant to this Lease to the condition that existed at the time of completion of the respective improvement, ordinary wear and tear excepted. Tenant shall bear the entire cost of such removal, repair and restoration, and City shall bear no liability for any costs caused or related to any termination of this Lease. In the event Tenant fails to comply with the requirements of this section, City may elect to remove such personal property and effect such removal, repair or restoration as necessary and recover such costs and expenses therefore from Tenant. Tenant shall pay such costs and expenses within 10 days of receipt of an invoice therefor. Tenant's obligations under this section shall survive the expiration or termination of this Lease.

2. TENANT WARRANTIES

(a) Tenant represents and warrants that all additions, alterations and improvements made to the Leased Premises by Tenant prior to the Effective Date are free and clear of any and all liens, claims, demands or other encumbrances.

(b) Tenant agrees to indemnify and hold City free and harmless from any losses, damages, costs or expenses (including reasonable attorney fees) resulting from any inaccuracy in or breach of any representation or warranty of Tenant and any breach or default by Tenant under any of Tenant's covenants or agreement under this Lease.

(c) This Section 2 shall survive expiration or termination of this Lease.

3. CONDITION OF THE PROPERTY. Tenant accepts the Leased Premises "as is", in its existing physical condition, without warranty by City or any duty or obligation on the part of City to maintain the Leased Premises, except as expressly set forth in this Lease. Tenant acknowledges that one or more of the following (collectively, "Potential Environmental Hazards") may be located in, on or underlying the Leased Premises:

(a) Hazardous Substances (as hereinafter defined). For purposes hereof, the term "Hazardous Substances" means any hazardous or toxic material or waste which is or becomes regulated by Legal Requirements, as defined herein, relating to the protection of human health or the environment, including, but not limited to, laws, requirements and regulations pertaining to reporting, licensing, permitting, investigating and remediating emissions, discharges, releases or threatened releases of such substances into the air, surface water, or land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of such substances. Without limiting the generality of the foregoing, the term Hazardous Substances includes any material or substance:

(1) now or hereafter defined as a "hazardous substance," "hazardous waste," "hazardous material," "extremely hazardous waste," "restricted hazardous waste" or "toxic substance" or words of similar import under any applicable local, state or federal law or under the regulations adopted or promulgated pursuant thereto, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§9601 et seq. ("CERCLA"); the Resource Conservation and Recovery Act of 1976, 42 U.S.C.

§§6901 et seq.; the Clean Air Act, 42 U.S.C. §§7401 et seq.; the Clean Water Act, 33 U.S.C. §§1251 et seq.; the Toxic Substance Control Act, 15 U.S.C. §§2601 et seq.; the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §§136 et seq.; the Atomic Energy Act of 1954, 42 U.S.C. §§2014 et seq.; the Nuclear Waste Policy Act of 1982, 42 U.S.C. §§10101 et seq.; the Pesticide Contamination Prevention Act, Sections 13145-13152 of the California Food and Agricultural Code; Divisions 6, 7 and 13 of the California Food and Agricultural Code, and Title 3, Division 6 of the California Code of Regulations related to pesticides; the California Hazardous Waste Control Law, Cal. Health and Safety Code §§25100 et seq.; the Porter-Cologne Water Quality Control Act, Cal. Water Code §§13000 et seq.; the Carpenter-Presley-Tanner Hazardous Substance Account Act (Health and Safety Code §§25300 et seq.); and the Medical Waste Management Act (Health and Safety Code §§25015 et seq.); or

(2) which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous, and is now or hereafter regulated as a Hazardous Substance by the United States, the State of California, any local governmental authority or any political subdivision thereof; or

(3) the presence of which on the Leased Premises poses or threatens to pose a hazard to the health or safety of persons on or about the Leased Premises or to the environment; or

(4) which contains gasoline, diesel fuel or other petroleum hydrocarbons; or

(5) which contains lead-based paint or other lead contamination, polychlorinated biphenyls ("PCBs") or asbestos or asbestos-containing materials or urea formaldehyde foam insulation; or

(6) which contains radon gas;

(b) fuel or chemical storage tanks, energized electrical conductors or equipment, or natural gas transmission or distribution pipelines; and

(c) other potentially hazardous substances, materials, products or conditions.

Tenant shall take reasonable precautions to protect Tenant's representatives (including, without limitation, any of Tenant's subtenants, consultants, subconsultants, contractors, subcontractors, employees, officers, trustees, invitees, volunteers or agents) from risks of harm from Potential Environmental Hazards. Tenant acknowledges that it has previously evaluated the condition of the Leased Premises and all matters affecting the suitability of the Leased Premises for the uses permitted by this Lease, including, but not limited to, the Potential Environmental Hazards listed herein. City shall not be responsible for any losses, liability or costs (including, but not limited to, consulting, engineering, clean-up and disposal costs, and legal costs) arising in whole or in part from any form of toxic material or hazardous substance that is existing on the Leased Premises prior to or after Tenant taking possession of the Leased Premises. Tenant shall be solely responsible for any losses, liability or costs (including, but not limited to, consulting, engineering, clean-up and disposal costs, and legal costs) arising in whole or in part from any form of toxic material or hazardous substance on the Leased Premises arising from or to the extent exacerbated by activities of Tenant or any of Tenant's representatives (including, without limitation, any of Tenant's employees, officers, invitees, students, guests or agents) on the Property during Tenant's prior occupancy of the Leased Premises or during the term of the Lease and any extension, and such responsibility shall survive expiration or termination of this

Lease.

4. **RENT.** In lieu of rent, Tenant shall provide in-kind services for the benefit of the public. These services shall include, without limitation, at least three free events each year such as serving as the anchor garden of the Spring Garden Tour, Kids Garden Day (a half day event filled with hands-on garden related activities for children of all age groups), and Taste of Harvest (showcasing the rich harvest bounty of the Fresno area and incorporating nutrition education and tasting activities as well as tours of the garden). In addition, Tenant shall open the Garden of the Sun to the general public, free of charge, at least three days a week and four hours per day.

5. **OPERATION, MAINTENANCE AND SECURITY DURING TERM OF LEASE.**

(a) City will not be obligated to provide security, maintain or make any repairs to the Leased Premises or any improvement thereon (except as expressly provided in Section 9 of this Lease). Tenant covenants and agrees to keep the Leased Premises clean and free from debris and trash during the term of the Lease and any extension, and be responsible for any maintenance or repair to the improvements and landscaping on the Leased Premises.

(b) Tenant covenants and agrees to operate and maintain the Leased Premises in accordance with then current City standards as provided by City and as City may reasonably amend from time-to-time (the current City standards is attached hereto as **Exhibit C**). In the event such City standards are inconsistent with any terms and conditions herein related to the operation and maintenance of the Leased Property, then the City standards shall control and take precedence over the terms and conditions of this Lease; provided, however, in no event shall the "current City standards" exceed the standard of City's operation and maintenance of other City parks.

(c) Tenant shall maintain and repair the Leased Premises, improvements and landscaping in a timely manner. Tenant shall bear the entire cost of such maintenance and repair, and City shall bear no liability for any costs caused or related to any termination of this Lease. In the event Tenant fails to comply with the requirements of this section, City may elect to perform such maintenance or repair as necessary and recover such costs and expenses therefore from Tenant. Tenant shall pay such costs and expenses within 10 days of receipt of an invoice therefore. Tenant's obligations under this section shall survive the expiration or termination of this Lease.

(d) Tenant covenants and agrees to provide any onsite security to City's reasonable satisfaction and to ensure that City's property and operations are not adversely affected by Tenant's use of the Leased Premises. Tenant covenants and agrees to limit the drinking of alcoholic beverages on the Leased Premises in accordance with Legal Requirements, and agrees to diligently enforce such limitations. In addition, Tenant agrees that no firearms shall be permitted on the Leased Premises (this is not intended to include firearms in possession of law enforcement officers). Tenant shall prohibit any person from using the Leased Premises for any use other than the use set forth in Section 6 of this Lease.

(e) Tenant is restricted from driving or using any motor vehicle on the Leased Premises. However, in the event Tenant elects to and does maintain automobile liability insurance as required in Section 8 of this Lease (including the attached insurance requirements in **Exhibit E**), then Tenant may use a motor vehicle on the Leased Premises.

6. **USE OF LEASED PREMISES.**

(a) Upon the Effective Date, Tenant may use the Leased Premises for (i) the sole purpose of maintaining and operating thereon a public educational facility as a demonstration garden (the "facility"), and (ii) the related uses as are customarily associated with the operation of a public facility and park.

(b) Tenant shall ensure that the facility remains open to the public during Tenant's normal operating hours. The Tenant's normal operating hours are Monday, Wednesday and Friday, 9:00 a.m. to 1:00 p.m. and most Saturdays and then by appointment.

(c) Tenant shall be responsible for programming and arranging for exhibits, lectures, classes and other activities related to the operation of the facility. Residents of the City of Fresno shall be provided the opportunity to participate in all such activities either for free or for a nominal cost.

(d) Tenant shall prepare a written report, annually, of its activities in connection with the Tenant's operation of the Leased Premises, and such written report shall be submitted to City on or before November 1 following each year of this Lease. This paragraph shall survive expiration or termination of this Lease.

7. **UTILITIES AND PORTABLE TOILET.** Tenant will pay for all water, sewer, garbage, electricity, natural gas, telephone, internet and other utilities for the Leased Premises during the term of the Lease and any extension. All accounts will be maintained on a current basis and paid before their delinquency. City will cooperate with Tenant in gaining appropriate access to any needed utilities on the Leased Premises. Tenant shall provide portable toilet accommodations on the Leased Premises. Utilities for the Leased Premises shall be separately metered from that of The Discovery Center.

8. **PROPERTY TAXES AND INSURANCE.**

(a) Tenant acknowledges that any possessory property interest arising by entering into this Lease may be subject to property taxation and that Tenant shall pay any property taxes levied on such interest. NOTIFICATION TO TENANT PURSUANT TO CALIFORNIA REVENUE AND TAXATION CODE SECTION 107.6: A POSSESSORY INTEREST SUBJECT TO PROPERTY TAXATION MAY BE CREATED BY ENTERING INTO THIS LEASE AND TENANT MAY BE SUBJECT TO THE PAYMENT OF PROPERTY TAXES LEVIED ON SUCH INTEREST.

(b) Throughout the life of this Lease, Tenant and each of its subtenants, consultants, subconsultants, contractors and subcontractors shall pay for and maintain in full force and effect all insurance, or self-insurance, as required in attached **Exhibit E** (and as may be required under Section 10 and **Exhibit F** of this Lease for any such consultants, subconsultants, contractors and subcontractors) or as may be authorized or required in writing by City's Risk Manager or his/her designee at any time and in his/her reasonable and sole discretion. Tenant and any subtenant of the facility on the Leased Premises, shall ensure that there is sufficient insurance coverage for the respective event activities whenever such facility is rented out to the public for an event. Tenant and each of its subtenants, consultants, subconsultants, contractors

and subcontractors shall ensure that there is sufficient insurance coverage for any work performed by their respective volunteers.

(c) If at any time during the life of the Lease or any extension, Tenant or any of its subtenants, consultants, subconsultants, contractors or subcontractors fail to maintain any required insurance in full force and effect, all of Tenant's activities under this Lease shall be discontinued immediately, until notice is received by City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to City. Any failure to maintain the required insurance shall be sufficient cause for City to terminate this Lease. No action taken by City pursuant to this section shall in any way relieve Tenant of its responsibilities under this Lease.

(d) The fact that insurance is obtained by Tenant shall not be deemed to release or diminish the liability of Tenant, including, without limitation, liability under the indemnity provisions of this Lease. The duty to indemnify Indemnitees (as defined in Section 14 of this Lease) shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Tenant. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Tenant, or its subtenants, consultants, subconsultants, contractors or subcontractors.

(e) Upon request of City, Tenant shall immediately furnish City with a complete copy of any insurance policy required under this Lease, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Lease.

(f) For purposes of this Lease, Tenant and its insurers hereby waive all rights of recovery against City and its officers, officials, employees, agents, invitees and volunteers, on account of injury, loss by or damage to the Tenant or any of its officers, employees, agents, students, guests or invitees, or its property or the property of others under its care, custody and control. Tenant shall give notice to its insurers that this waiver of subrogation is contained in this Lease. This requirement shall survive termination or expiration of this Lease.

(g) Tenant is also responsible for the compliance of Tenant's subtenants, consultants, subconsultants, contractors and subcontractors with the insurance requirements in Subsections (b), (c), (d), (e) and (f) of this section (and as may be made applicable under Section 10 of this Lease for such consultants, subconsultants, contractors and subcontractors), except that any required certificates and applicable endorsements shall be on file with Tenant and City prior to the commencement of any subtenancy, work or services by the respective subtenant, consultant, subconsultant, contractor or subcontractor.

9. **CITY IMPROVEMENTS.** City may, but is not obligated to, make any future improvements to the Leased Premises pursuant to Section 12(b) of this Lease. City's obligation to perform any service obligation or make any payment under this Lease, including, without limitation, a decision to make any improvements to the Leased Premises at its cost and expense, shall be contingent upon the appropriation of funds by City's governing body sufficient to provide such services or payment during City's respective fiscal year (July 1 through June 30). The performance of service or payment obligations shall be funded only from current funds, budgeted and appropriated, on deposit in a reserve fund, or otherwise legally available for funding such services or other Leased Premises costs. This Lease shall not create an

immediate debt for funding all service obligations throughout the Term of the Lease, and is not a pledge of City's full faith and credit. During its annual budgeting process, City shall consider, and will use best efforts to appropriate funding to meet its construction, and other estimated costs under this Lease for the fiscal year under consideration.

10. TENANT IMPROVEMENTS.

(a) Upon execution of this Lease by the parties, Tenant will diligently proceed to construct a fence on the Leased Premises consistent with the property line as shown on **Exhibit D**, to separate the Leased Premises from the balance of the Property, and a separate entrance gate for Tenant and its invitees. This will be at the sole cost and expense of Tenant. Except to maintain and repair all improvements on the Leased Premises, Tenant shall have no right to improve, add to, or alter the Leased Premises without the prior written consent of City. City shall not be obligated or required to make, provide, construct or install any improvements to any portion of the Leased Premises except as expressly set forth in Section 9, above.

(b) Tenant will notify City at least 7 days prior to the commencement of any construction. City shall have the right to post and keep posted on the Leased Premises, and record, a Notice of Non-responsibility. Tenant shall keep the Leased Premises free from any and all liens and encumbrances arising out of or in any way connected with the work performed, materials furnished or obligations incurred by Tenant in connection with any repair, alteration, addition or improvement of the Leased Premises.

(c) Tenant shall prepare a work plan and cost estimate which describes in detail and with specificity the nature, scope, location, estimated costs and purpose of all of Tenant's improvements, repair work and activities to be performed on the Leased Premises, including, without limitation, the specific areas in which Tenant and Tenant's representatives, may have access and may conduct Tenant's activities and a schedule of Tenant's activities (the "Work Plan"). The Work Plan will be submitted to the following person at City for preliminary approval: Director of Fresno Department of Parks, After School, Recreation and Community Services, 2326 Fresno Street, Fresno, CA 93721-1824, Phone No. (559) 621-2900. Tenant acknowledges and agrees that City's review of the Work Plan is solely for the purpose of protecting City's interests, and shall not be deemed to create any liability of any kind on the part of City, or to constitute a representation on the part of City that the Work Plan is adequate or appropriate for any purpose, or complies with applicable Legal Requirements, as defined herein. Except for the fence construction referenced in Section 10 (a) above, Tenant and Tenant's representatives shall not commence activities associated with the Tenant's improvements on the Leased Premises without the prior written consent of City to the Work Plan as set forth above, which consent shall not be unreasonably withheld. Tenant agrees and covenants that all of Tenant's activities shall be performed in strict compliance to the approved Work Plan. Tenant shall not modify the Work Plan without the prior written approval of City.

(d) Tenant covenants and agrees to cooperate with City and abide by any and all orders or instructions issued by City, its employees, agents or representatives. City reserves the right to restrict access to the Leased Premises in the event of fire, earthquake, storm, riot, civil disturbance, or other casualty or emergency, or in connection with City's response thereto, or if emergency repairs or maintenance are required to City facilities within or in the vicinity of the Leased Premises, or otherwise when City deems it advisable to do so.

(e) Tenant covenants and agrees that Tenant shall conduct Tenant's activities in compliance with the Work Plan approved by City and in such a manner so as to protect the Leased Premises, City's facilities, the environment and human health and safety. Except as may be expressly provided in such Work Plan, Tenant shall not cause or permit any Hazardous Substances, as defined herein, to be brought upon, produced, stored, used, discharged or disposed of on, or in the vicinity of, the Leased Premises. In the event City determines that Tenant's activities in any way endanger the Leased Premises, City's facilities, the environment, or human health and safety, City may, at City's sole discretion, require that Tenant halt Tenant's activities until appropriate protective measures may be taken to eliminate such endangerment to City's satisfaction. Tenant shall hold City harmless from any claims in any way resulting from any delay under this section. City's right to halt activities under this section shall not in any way affect or alter Tenant's insurance or indemnity obligations under this Lease, nor shall it relieve Tenant from any of Tenant's obligations hereunder that pertain to health, safety, or the protection of the environment.

(f) Tenant shall comply, at Tenant's sole cost and expense, with all applicable Legal Requirements when conducting Tenant's activities and Tenant shall obtain, at Tenant's sole cost and expense any and all necessary permits, authorizations and approvals applicable to Tenant's activities. City shall have a right to observe Tenant's activities at any time to confirm Tenant's compliance with the requirements of this Lease and applicable laws.

(g) Certain planning, land use, zoning and other permits and public actions required in connection with any Tenant improvement project, without limitation, the approval of this Lease, the environmental review and analysis under the National Environmental Policy Act (NEPA) or any other statute, and other transactions contemplated by this Lease are discretionary government actions. Nothing in this Lease obligates City or any other governmental entity to grant final approval of any matter described herein. Such actions are legislative, quasi-judicial, or otherwise discretionary in nature. City cannot take action with respect to such matters before completing the environmental assessment of the respective project under NEPA and any other applicable statutes. City cannot and does not commit in advance that it will give final approval to any matter. City shall not be liable, in law or equity, to Tenant or any of its executors, administrators, transferees, successors-in-interest or assigns for any failure of any governmental entity to grant approval on any matter subject to discretionary approval.

(h) Any consent by City under Subsection (a) or (c) above shall be provided Tenant within 60 days of receipt by City of Tenant's written request for such consent.

(i) Tenant shall require that any improvement be constructed by a licensed contractor.

(j) Tenant shall include in any contract by Tenant for the design, construction, renovation, demolition or repair of any improvement on the Property the requirements in **Exhibit F**. Tenant agrees that no change order to any such contract will be issued without the prior written approval from the City which affects the Work Plan for the project, would affect the size or capacity of any project component, cause a significant change in the location of any project component, affect the duration of the project, alter materials used in the project, or affects any City-approved green or solar energy system component(s) of the project. Tenant also agrees to make City a third-party beneficiary in any such contract.

(k) Ownership of all structures, buildings, or improvements constructed by Tenant upon the Property and all alterations, additions, or betterments thereto, shall vest in City, without compensation being paid therefor.

11. CONDEMNATION; DAMAGE OR DESTRUCTION.

(a) Total Condemnation. Should, during the term of this Lease, title and possession of all of the Leased Premises be taken under the power of eminent domain by any public or quasi-public agency or entity, this Lease shall terminate as of 12:01 a.m. of, whichever first occurs, the date legal title of said Leased Premises becomes vested in or actual physical possession of said Leased Premises is taken by the agency or entity exercising the power of eminent domain and both City and Tenant shall thereafter be released from all obligations under this Lease.

(b) Partial Condemnation.

(1) If a portion of the Leased Premises is taken under the power of eminent domain and such taking materially affects Tenant's ability to utilize the Leased Premises, Tenant shall have the right to terminate this Lease as of 12:01 a.m. of, whichever first occurs, the date legal title of said Leased Premises becomes vested in or actual physical possession of said Leased Premises is taken by the agency or entity exercising the power of eminent domain, by giving written notice to City within 60 days after Tenant's receipt of notice of the partial condemnation.

(2) If a portion of the Leased Premises is taken under the power of eminent domain and Tenant does not terminate this Lease pursuant to the terms and conditions of the preceding paragraph, then (i) this Lease shall be deemed terminated with respect to only the condemned portion of the Leased Premises; and (ii) the rent payable hereunder shall be equitably reduced, as determined by the parties in good faith.

(c) Condemnation Award. In any eminent domain proceeding commenced by any public or quasi-public agency or entity, any compensation or damages awarded or payable because of the taking of any land or, improvements or leasehold interest of the Leased Premises by eminent domain shall be paid to and be the sole property of City free and clear of any claim of Tenant or any person claiming rights to the Leased Premises through or under Tenant.

(d) Damage or Destruction. In the event of damage or destruction to any improvement that is part of the Leased Premises during this Lease, Tenant shall immediately notify City in writing thereof. If such damage or destruction is caused by the negligence or willful misconduct of Tenant or any of its employees, officers, agents, invitees, students or guests, then Tenant shall replace or rebuild the improvement within 120 days after such damage or destruction, and in such manner and according to such plans and specifications which would restore the Leased Premises to substantially the same condition as immediately before its destruction or damage. City, at its sole option, and subject to budget appropriations, may repair the Leased Premises or terminate this Lease upon written notice to Tenant if the Leased Premises is otherwise partially destroyed or damaged. If City elects to repair or restore the Leased Premises, it will notify Tenant within 20 business days, and shall complete the work within 120 days after, the casualty date, and this Lease will not terminate. Tenant waives any

right to terminate the Lease under California Civil Code sections 1932(2) or 1933(4). This paragraph shall survive expiration or termination of this Lease.

12. RIGHT OF ENTRY, IMPROVING PREMISES AND FLIGHT.

(a) City, and City's representatives, shall have the right to enter the Leased Premises at any time during the Lease, to protect, inspect, exercise or investigate any rights of City herein reserved.

(b) From time to time, City may, in its sole discretion, construct or cause to be constructed improvements to the Leased Premises. Such construction shall be at City's sole cost and expense, except as otherwise provided in this Lease.

(c) City owns and operates the Fresno Yosemite International Airport ("Airport") on nearby property. There is reserved to the City, its successors, and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the air space above the surface of the Leased Premises, together with the right to cause in said air space such noise as may be inherent in the operation of aircraft, now known or hereafter used for navigation of or flight in the air, using said air space for landing at, taking off from or operation on the Airport. Tenant, its successors, and assigns, shall not erect or permit the erection of any structure, or permit the growth of any tree on the Leased Premises which would be an airport hazard within the standards established by the Federal Aviation Agency Technical Standard Order M-18, as amended. Tenant, its successors and assigns, shall not engage in or conduct or permit the conduct of any activity on the Leased Premises which will interfere in any manner with the operation of the Airport as an airport or with aircraft operations or related operations conducted on the airport by City or its lessees, and shall not make use of the Leased Premises in any manner which might interfere with the landing and taking off of aircraft from said Airport, or otherwise constitute an airport hazard.

13. LEGAL REQUIREMENTS.

(a) Tenant covenants and agrees, at Tenant's sole cost and expense, promptly to comply, and cause all of Tenant's representatives (including, without limitation, any of Tenant's subtenants, consultants, subconsultants, contractors, subcontractors, employees, officers, trustees, invitees, volunteers or agents) to comply, with all "Legal Requirements" defined herein to include each of the following:

(i) all applicable laws, statutes, ordinances, rules, regulations, requirements or orders of municipal, state, and federal authorities now in force or that may later be in force, including, without limitation, those laws which relate to the payment of prevailing wages or the generation, use, storage, handling, treatment, transportation or disposal of Hazardous Substances or to health, safety, noise, environmental protection, air quality or water quality;

(ii) the conditions of any permit, occupancy certificate, license or other approval issued by public officers relating to Tenant's activities, or Tenant's use or occupancy of the Leased Premises; and

(iii) any liens, encumbrances, easements, covenants, conditions, restrictions and servitudes (if any) of record, or of which Tenant has notice, which may be applicable to the

Leased Premises regardless of when they become effective, insofar as they relate to Tenant's activities or Tenant's use or occupancy of the Leased Premises.

(b) The judgment of any court of competent jurisdiction, or the admission of Tenant in any action or proceeding against Tenant, whether or not City is a party in such action or proceeding, that Tenant has violated any Legal Requirement relating to Tenant's activities and Tenant's use or occupancy of the Leased Premises, shall be conclusive of that fact as between City and Tenant.

(c) Tenant shall furnish reasonably satisfactory evidence of compliance with the Legal Requirements upon request by City.

14. INDEMNIFICATION; RELEASE; AND SAFETY.

(a) Tenant shall indemnify, hold harmless and defend City and each of its officers, officials, employees, agents, invitees and volunteers (hereinafter collectively referred to as "Indemnitees") from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by City, Tenant or any other person, and from any and all claims, demands and actions in law or equity (including reasonable attorney's fees and litigation expenses) (hereinafter collectively referred to as "Claims"), but only in proportion to and to the extent such Claims arise from the negligence, wrongful acts or omissions, or willful misconduct of Tenant, its officers, employees, agents, invitees, students or guests in the: (i) occupancy, maintenance and/or use of the Leased Premises; (ii) use of any part of the Property, including any common area(s), upon which the Leased Premises is located; or (iii) performance of, or failure to perform, this Lease.

(b) Tenant acknowledges that all Claims arising out of or in any way connected with releases or discharges of a Hazardous Substance, or the exacerbation of a Potential Environmental Hazard, occurring as a result of or in connection with Tenant's use or occupancy of the Leased Premises, Tenant's activities or the activities of any of Tenant's employees, officers, invitees, students, guests or agents, and all costs, expenses and liabilities for environmental investigations, monitoring, containment, abatement, removal, repair, cleanup, restoration, remediation and other response costs, including reasonable attorneys' fees and disbursements and any fines and penalties imposed for the violation of any Legal Requirements relating to the environment or human health, are expressly within the scope of the indemnity set forth above.

(c) Tenant's use and occupancy of the Leased Premises shall be at Tenant's sole risk and expense. Tenant accepts all risk relating to Tenant's occupancy and use of the Leased Premises. City shall not be liable to Tenant for, and Tenant hereby waives and releases City and the other Indemnitees from, any and all Claims resulting from or attributable to an occurrence on or about the Leased Premises or related to Tenant's operations and activities. Tenant shall immediately notify City of any occurrence on the Leased Premises resulting in injury or death to any person or damage to property of any person.

(d) Tenant shall, to the maximum extent permitted by law, indemnify, protect, defend and hold Indemnitees harmless against claims, losses, costs (including reasonable attorneys' fees and costs), liabilities and damages resulting from the failure of Tenant to comply with any of the insurance requirements set forth in this Lease, including any referenced exhibit.

(e) The provisions of this Section 14 shall survive the expiration or termination of this

Lease.

(f) The provisions of this Section 14 shall not apply to any Claims caused solely by the gross negligence, or caused by the willful misconduct, of any Indemnitees.

15. SURRENDER OF POSSESSION. It is mutually understood and agreed that upon expiration or earlier termination of the Lease, Tenant will surrender the Leased Premises to City in the same or better condition as on the Effective Date, ordinary wear and tear excepted. Tenant will also surrender to City all improvements constructed or placed upon the Property on or after the Effective Date in the same or better condition as on the date the respective improvement was either placed on the Property, or the construction completed, whichever is applicable; ordinary wear and tear excepted. All improvements constructed or placed upon the Leased Premises by Tenant prior to or after the Effective Date are the property of City at the time of placement or completion, whichever is applicable. Except for any encumbrances placed thereon by City, Tenant warrants that the Leased Premises and all such improvements are and shall remain and be free and clear of any and all liens, claims, demands and other encumbrances throughout the life of this Lease and when surrendered to City at the time of surrendering the Leased Premises. This warranty shall survive expiration or termination of this Lease.

16. ASSIGNMENT AND SURRENDER OF LEASE NOT A MERGER.

(a) Except as expressly provided herein, Tenant shall not assign, transfer, hypothecate or mortgage this Lease, or any interest herein, or sublease the Leased Premises, or any part thereof, or any right or privilege pertaining thereto.

(b) Tenant may sublease part or all of the Leased Premises pursuant to a sublease subject to the prior written consent of City which may be withheld for any reason. Tenant shall submit any sublease to City for its review and written consent at least 30 days in advance of the date in which the sublease is intended by the parties to go into effect. Any sublease shall not allow assignment, transfer, hypothecation, mortgage of the sublease, or any interest therein, without the prior written consent of City which may be withheld for any reason.

(c) If City has consented to any sublease agreement, Tenant's voluntary or other surrender of this Lease, or the parties' mutual cancellation of it, will not merge the ownership and leasehold interests. At City's sole option, Tenant's surrender or any cancellation of the Lease will terminate any such agreement(s).

(d) City's consent in one instance will not be a consent to any subsequent encumbrance, transfer, assignment, or subleasing without City's prior written consent. Any encumbrance, transfer, assignment or sublease entered into by Tenant (whether voluntary or involuntary, by operation of law or otherwise) without City's prior written consent which may be withheld for any reason, is void and, at City's option, will terminate this Lease.

17. DEFAULT AND TERMINATION.

(a) Except as otherwise expressly provided in this Section 17, if either party materially defaults in the performance of any condition or covenant in this Lease, the other party may terminate this Lease upon written notice to the defaulting party, but only if the defaulting party fails to rectify said default within 60 days after written notice thereof is served upon

defaulting party by the other party. In the event, however, that any default complained of hereunder is of such nature that the same cannot be rectified in such 60 days, then such default shall be deemed to be rectified if the defaulting party shall have commenced the compliance of the provisions hereof breached by it within such 60 day period and shall with all diligence prosecute the work or perform the particular provisions until the same shall have been fully rectified or performed.

(b) For purposes of Section 17(a) above, the occurrence of any of the following events shall constitute a material default by Tenant:

(1) The failure of Tenant or any of its subtenants, consultants, subconsultants, contractors or subcontractors to maintain the insurance required under this Lease.

(2) The failure of Tenant to maintain the landscaping (lawns and trees) in accordance with the standards set forth in **Exhibit C**.

(3) Tenant becoming insolvent or the making by Tenant of any general arrangement or any assignment for the benefit of creditors; or the filing by or against Tenant of a petition to have Tenant adjudged bankrupt, unless in the case of a petition filed against Tenant the same is dismissed within 60 calendar days.

(4) The abandonment, vacation or discontinuance of any Tenant facilities, operations, activities or services on the Leased Premises as required by this Lease for more than one month by Tenant.

(5) The failure of Tenant to keep, perform and comply with any promises, covenants, conditions or terms set forth in this Lease.

18. **CHOICE OF LAW.** Subject to any provisions hereof, this Lease shall bind the parties, their personal representatives, successors and assigns. This Lease shall be governed by the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Lease and rights and duties hereunder shall be Fresno County, California.

19. **NOTICES.** All notices, demands, consents or requests which may be or are required to be given by a party hereunder, shall be in writing and shall be deemed to be duly given if delivered personally, transmitted by facsimile followed by telephone confirmation of receipt, or sent by United States registered or certified mail, with postage prepaid, return receipt requested, addressed to the party to which notice is to be given at the party's address set forth on the signature page of this Lease or at such other address as the parties may from time to time designate by written notice. Notices served by United States mail in the manner above described shall be deemed sufficiently served or given at the time of the mailing thereof.

20. **ATTORNEY'S FEES.** If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Lease, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.

21. **THIRD PARTY BENEFICIARIES.** The rights, interests, duties and obligations defined within this Lease are intended for the specific parties hereto as identified in the preamble of this Lease. It is not intended that any rights or interests in this Lease benefit or flow to the interest of any third parties.

22. **GENERAL PROVISIONS.**

(a) The section headings in this Lease are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this Lease.

(b) The provisions of this Lease are severable. The invalidity, or unenforceability of any one provision in this Lease shall not affect the other provisions.

(c) The parties acknowledge that this Lease in its final form is the result of the combined efforts of the parties and that, should any provision of this Lease be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Lease in favor or against any party, but rather by construing the terms in accordance with their generally accepted meaning.

(d) Each exhibit and attachment referenced in this Lease is, by the reference, incorporated into and made a part of this Lease.

(e) No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

(f) Subject to Section 16, above, once this Lease is signed by all parties, it shall be binding upon, and shall inure to the benefit of, all parties, and each parties' respective heirs, successors, assigns, transferee, agents, servants, employees and representatives.

(g) The waiver by a party of a breach by another of any provision of this Lease shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Lease. No provisions of this Lease may be waived unless in writing and signed by all parties to this Lease. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

(h) Tenant is an independent contractor. This Lease is not intended, and shall not be construed, to create the relationship of agent, servant, employee, partnership, joint venture or association as between City and Tenant.

23. **WASTE, NUISANCE, QUIET POSSESSION.**

(a) Tenant will not do any of the following: (i) commit or permit any waste on the Leased Premises, (ii) maintain, commit, or permit the maintenance or commission of any nuisance, as defined in California Civil Code section 3479, on the Leased Premises, (iii) use or permit use of the Leased Premises for any unlawful purpose, or (iv) maintain, commit, or permit any other act or condition which may disturb the quiet enjoyment of City or any other tenant of City adjacent to the Leased Premises.

(b) Upon Tenant keeping, observing, and performing all of the covenants, conditions,

promises and provisions on Tenant's part to be kept, observed or performed under this Lease, Tenant shall have quiet possession of the Leased Premises during the term hereof subject to all of the provisions of this Lease.

24. **MAINTENANCE OF RECORDS.** Records of Tenant pertaining to this Lease shall be maintained and kept in accordance with generally recognized accounting principles and shall be available to City or its authorized representatives upon request during regular business hours throughout the life of this Lease and for a period of four years after expiration or termination of the Lease or, if longer, for the period of time required by law. In addition, all books, documents, papers, and records of Tenant pertaining to this Lease shall be available for the purpose of making audits, examinations, excerpts, and transcriptions for the same period of time. This section shall survive expiration or termination of this Lease.

25. **ENTIRETY-SUCCESSION.** This Lease merges and supersedes all prior negotiations, representations and agreements, and constitutes the entire agreement concerning City's leasing of the Leased Premises to Tenant and the consideration therefore. This Lease may be modified only by written instrument duly authorized and executed by both Tenant and City.

26. **CONDITION PRECEDENT.** The following is a condition precedent to the effectiveness of this Lease. This condition must be satisfied on or before June 30th, 2011 or this Lease will be void and of no effect. City, in writing, may waive any condition or agree to extend the time for satisfaction. The writing shall be deemed to be duly given if delivered personally, by facsimile confirmed by telephone, or deposited into the United States mail, with first class postage prepaid, addressed to the party to which notice is to be given at the party's address set forth on the signature page of this Lease or at such other address as the parties may from time to time designate by written notice.

Condition Precedent - Execution of the New Lease with The Discovery Center

City and The Discovery Center have fully executed a new lease whereby the Discovery Center has relinquished that portion of the Property to be leased by Tenant from City, and such new lease is in full force and effect as evidenced by the satisfaction of all conditions precedent contained therein.

///

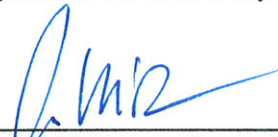
///

IN WITNESS WHEREOF, the parties have caused this Lease to be executed by their authorized representatives in Fresno, California as of the date first above written.

City:
City of Fresno,
a California municipal corporation

Tenant:
The Regents of the University of California

By 
Bruce Rudd, Director
Department of Parks, After School,
Recreation and Community Services

By 
Jake McGuire, Controller
and Director of Business Services
Agriculture and Natural Resources

Attest:
Rebecca E. Klisch
City Clerk

By  7/12/11
Deputy

(Attach certificate of acknowledgment)

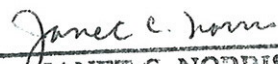
By _____
Name _____
Title _____

(Attach certificates of acknowledgment)

Approved as to form:
James C. Sanchez
City Attorney

By  7/15/11
Nancy A. Algier Date
Senior Deputy

APPROVED AS TO FORM


JANET C. NORRIS
UNIVERSITY COUNCIL OF THE REGENTS
OF THE UNIVERSITY OF CALIFORNIA

Addresses:

Attention: Contract Administrator
City of Fresno Parks, Recreation &
Community Services
Dickey Youth Development Center
1515 E. Divisadero St.
Fresno, CA 93721
Telephone: (559) 621-2900

The Regents of the University of
California UCCE, Fresno County
Attention: Jeanette M. Sutherlin,
Fresno County Director
1720 S. Maple Avenue
Fresno, CA 93702
Telephone: (559) 456-7285
FAX: (559) 456-7575

Attachments:

- Exhibit A – Map/Legal Description of Property
- Exhibit B – Site Improvements
- Exhibit C – City Maintenance Standards
- Exhibit D – Map/Legal Description of Leased Premises
- Exhibit E – Insurance Requirements
- Exhibit F - Contractor Requirements Related to Tenant Improvements

Exhibit A
(Cover Sheet of 2-page Exhibit)

Legal Description and Map - Property of City known as Reedy Park

DISCOVERY CENTER
LEGAL DESCRIPTION

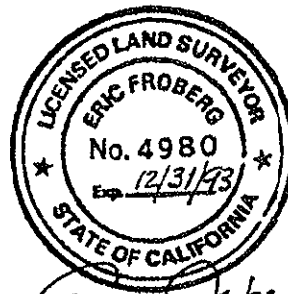
That portion of the Southwest quarter of Section 30, Township 13 South, Range 21 East, Mount Diablo Base and Meridian, more particularly described as follows:

COMMENCING at the South quarter corner of said Section 30; thence North $89^{\circ}57'50''$ West, along the South line of Section 30, a distance of 1332.04 feet to the Southwest corner of the East half of the Southwest quarter of Section 30; thence North $00^{\circ}00'10''$ East, along the West line of the East half of the Southwest quarter of Section 30, a distance of 1205.00 feet; thence South $89^{\circ}57'50''$ East, along a line which is parallel with and 1205.00 feet North of the South line of Section 30, a distance of 50.00 feet to the TRUE POINT OF BEGINNING; thence South $00^{\circ}00'10''$ West, along a line which is parallel with and 50.00 feet East of the West line of the East one half of the Southwest quarter of Section 30, a distance of 846.24 feet; thence South $89^{\circ}57'50''$ East, along a line which is parallel with and 358.76 feet North of the South line of said Section 30, a distance of 290.00 feet; thence North $00^{\circ}00'10''$ East a distance of 846.24 feet; thence North $89^{\circ}57'50''$ West a distance of 290.00 feet to the TRUE POINT OF BEGINNING.

Contains: 5.63 Acres \pm
245,410 sq. ft. \pm

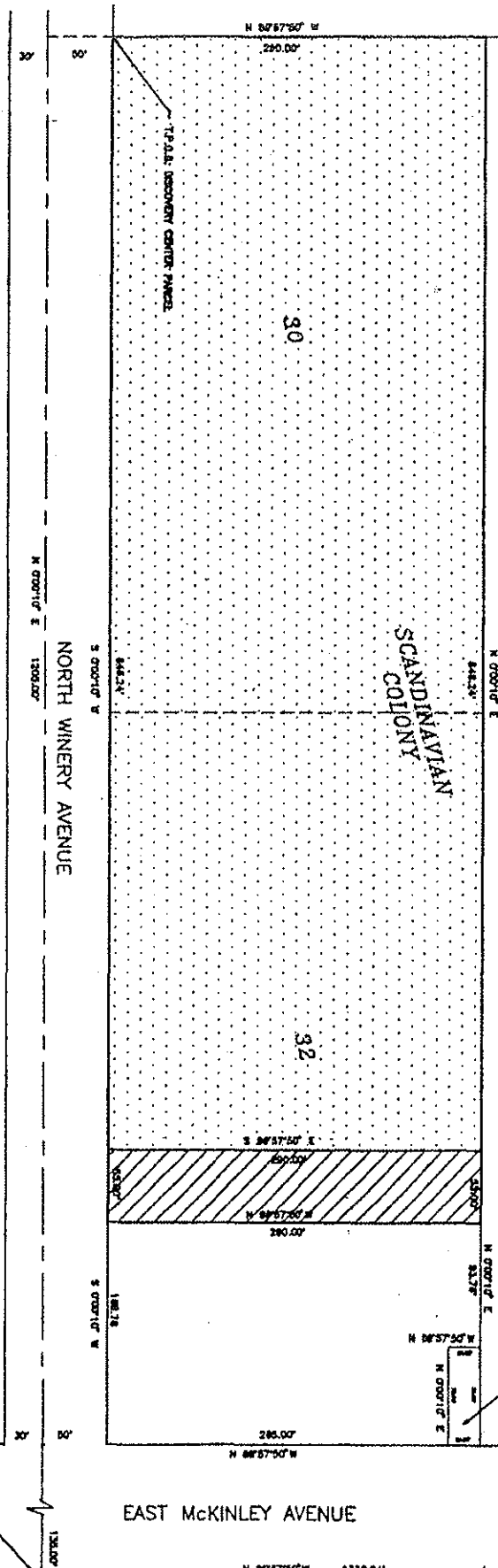
Reference Drawing No. 25-AA-134

C:\LEGAL\DISCOVER
8/30/93



Eric Froberg

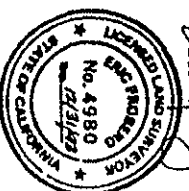
DISCOVERY CENTER AREA TO BE TRANSFERRED FROM PARCELS 30 AND 32 TO THE AIRPORT DEPARTMENT FOR AIRPORT USES - 13,000 SQ. FT. ±
SOME PORTION OF 444-281-021
DISCOVERY CENTER PARCEL AREA = 344,410 SQ. FT. ±
SOME PORTION OF 444-281-021



SOUTH QUARTER CORNER
OF SECTION 30,
TOWNSHIP 13 NORTH,
RANGE 21 EAST,
MOUNT Diablo Base and Meridian

CITY OF FRESNO
WATER PLANT
STATION #25

SOUTHWEST CORNER OF THE EAST HALF
OF THE SOUTHWEST QUARTER OF SECTION 30,
TOWNSHIP 13 NORTH,
RANGE 21 EAST,
MOUNT Diablo Base and Meridian



CITY OF FRESNO—Department of Public Works

DISCOVERY CENTER
PARCEL ADJUSTMENT

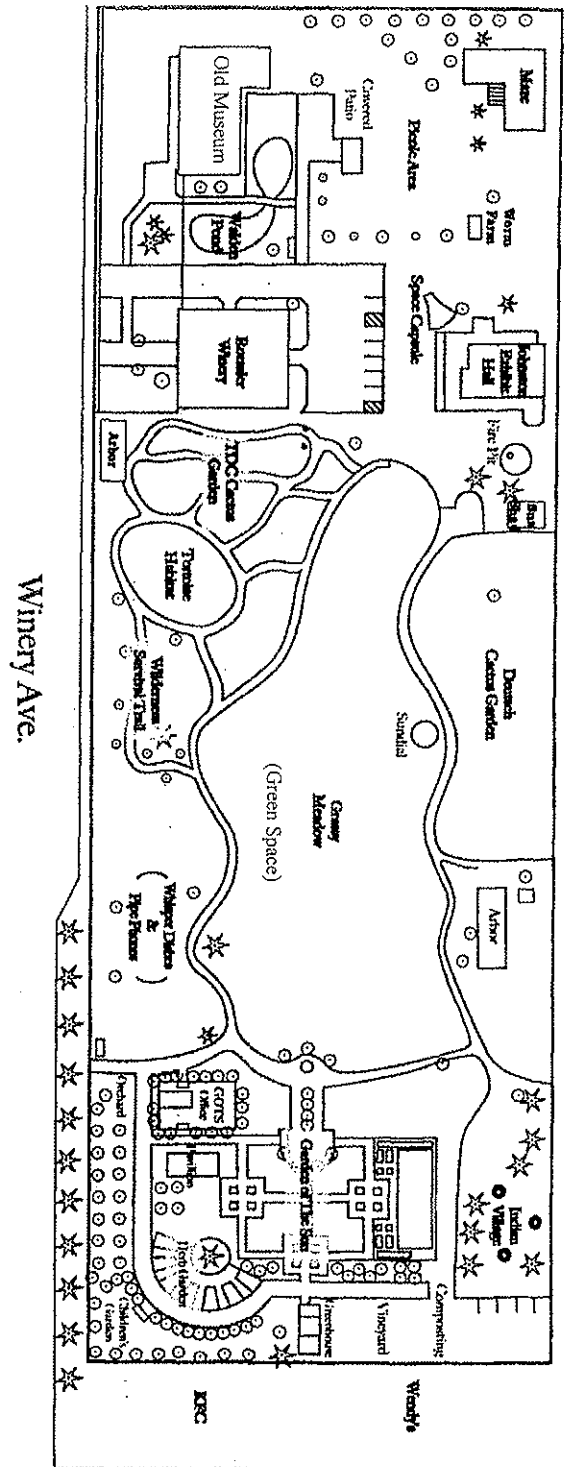
NOTED: NO. 430
DATE: 12/31/93
BY: [Signature]
REV. 4/31/94, CIV
REF. 25-AA-118
A25AA134

CITY OF FRESNO
OFFICE: [Blank]
DATE: 12/31/93
SCALE: 1" = 50'
25-AA-134

Exhibit B
(Cover Sheet of 1-page Exhibit)

Site Improvements

"Property"
 1944, 1936, and 1750 N. Winery
 Fresno CA 93703



McKinley

EXHIBIT "B"

Exhibit C
(Cover Sheet of 3-page Exhibit)

City Maintenance Standards

Exhibit C
PARKS MAINTENANCE STANDARDS
REEDY PARK (THE REGENTS OF THE
UNIVERSITY OF CALIFORNIA)



Lawns	Standard Description	Measure
Cleanliness	Turf is free of litter Turf is free of organic debris	< 5 pieces of litter in a 25'x25' area
Color	% of Turf Area Green	80%
Drainage	% of Turf Area free of standing water	80%
Edged	Edges clearly defined: less than 1" of growth over adjoining landscape	1"
Height	Uniform height of less than:	3.5"
Trees	Standard Description	Measure
Limbs	# of hanging limbs visible	< 5
Plant Health	% trees alive	80%
	% trees free from damage	80%

Exhibit C
PARKS MAINTENANCE STANDARDS
REEDY PARK (THE REGENTS OF THE
UNIVERSITY OF CALIFORNIA)



Restrooms	Standard Description	Measure
Cleanliness	% Free of litter, debris and waste	<3 pieces of litter are visible on the floor
Graffiti	% Free of Graffiti	80%
Functionality of Structure	% toilets, urinals, partitions, water faucets and drains operational	80%
Lighting	% lights operational	80%
Painting	% uniform coat and not peeling	80%
Signage	# legible and properly installed	80%
Supply Inventory	% stocked with toilet paper, blowers	80%
Waste Receptacles	% Clean and not overflowing	80%
Tot Lots	Standard Description	Measure
Cleanliness	Play area free of litter and debris	< 5 pieces of litter in a 25'x25' area
Graffiti	% Free of Graffiti	80%
Functionality	% of play equipment present and functional	80%

Exhibit C
PARKS MAINTENANCE STANDARDS
REEDY PARK (THE REGENTS OF THE
UNIVERSITY OF CALIFORNIA)



Shelter Maintenance & Picnic Areas	Standard Description	Measure
Cleanliness	% of benches, table and grills free of litter, and dirt.	80%
Graffiti	% benches, tables and grills free of graffiti	80%
Painting	% of benches, table and grills free of peeling or chipped paint.	80%
Functionality of Equipment	% of benches and tables structurally sound, properly anchored and free of sharp edges. Grills are operational	80%

Exhibit D
(Cover Sheet of 3-page Exhibit)

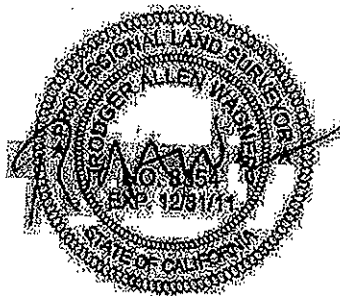
Legal Description and Map of Leased Premises

EXHIBIT "D"

A portion of the east half of the southwest quarter of Section 30, Township 13 South, Range 21 East, Mount Diablo Base and Meridian, according to the Official United States Government Township Plat thereof, more particularly described as follows:

COMMENCING at the southwest corner of said Section 30; thence S 89°57'11" E, along the south line of said southwest quarter of Section 30, a distance of 1332.08 feet to the southwest corner of said east half of the southwest quarter of Section 30; thence N 0°00'10" E, along the west line of said east half, a distance of 358.76 feet; thence S 89°57'11" E, parallel with the south line of said southwest quarter, a distance of 50.00 feet to the TRUE POINT OF BEGINNING of this description; thence continuing S 89°57'11" E, parallel with the south line of said southwest quarter, a distance of 290.00 feet; thence N 0°00'10" E, parallel with the west line of said east half, a distance of 68.00 feet; thence N 89°57'11" W, parallel with the south line of said southwest quarter, a distance of 53.60 feet; thence N 6°17'35" W, a distance of 85.81 feet to the beginning of a tangent curve concave southwesterly and having a radius of 75.00 feet; thence northwesterly, along the arc of said curve, through a central angle of 83°39'36", an arc distance of 109.51 feet; thence N 89°57'11" W, tangent to last said curve and parallel with the south line of said southwest quarter, a distance of 152.50 feet to the east right-of-way line of that portion of North Winery Avenue previously dedicated for public street purposes by City Resolution No. 68-301 recorded November 14, 1968 in Book 5634 at Page 43, Official Records of Fresno County; thence S 0°00'10" W, along said east right-of-way line, parallel with and 50.00 feet east of the west line of said east half, a distance of 220.00 feet to the TRUE POINT OF BEGINNING.

Contains an area of 53,450 square feet, more or less.



11-4-00

EXHIBIT "D"

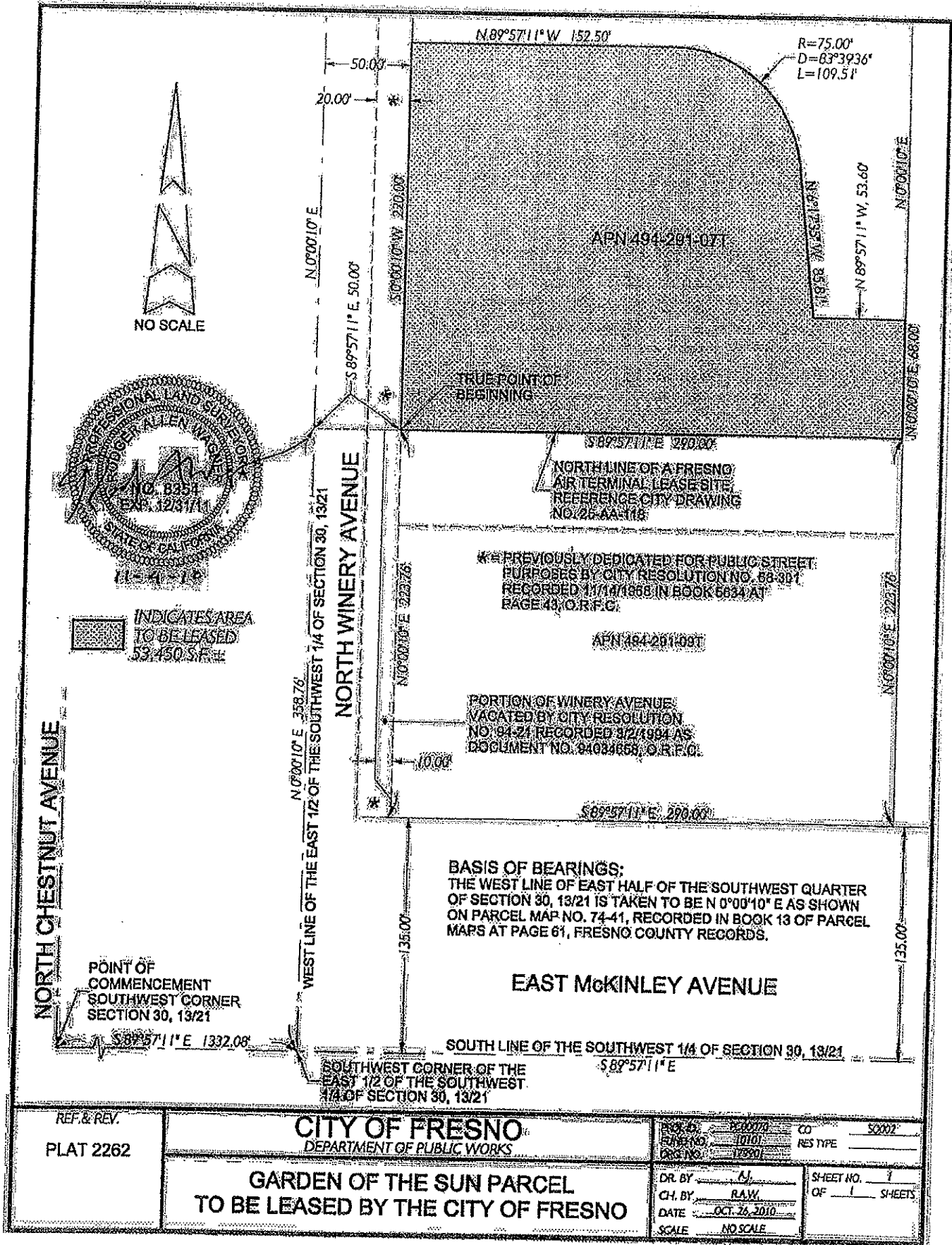


EXHIBIT "D"

N. WINERY AVE.

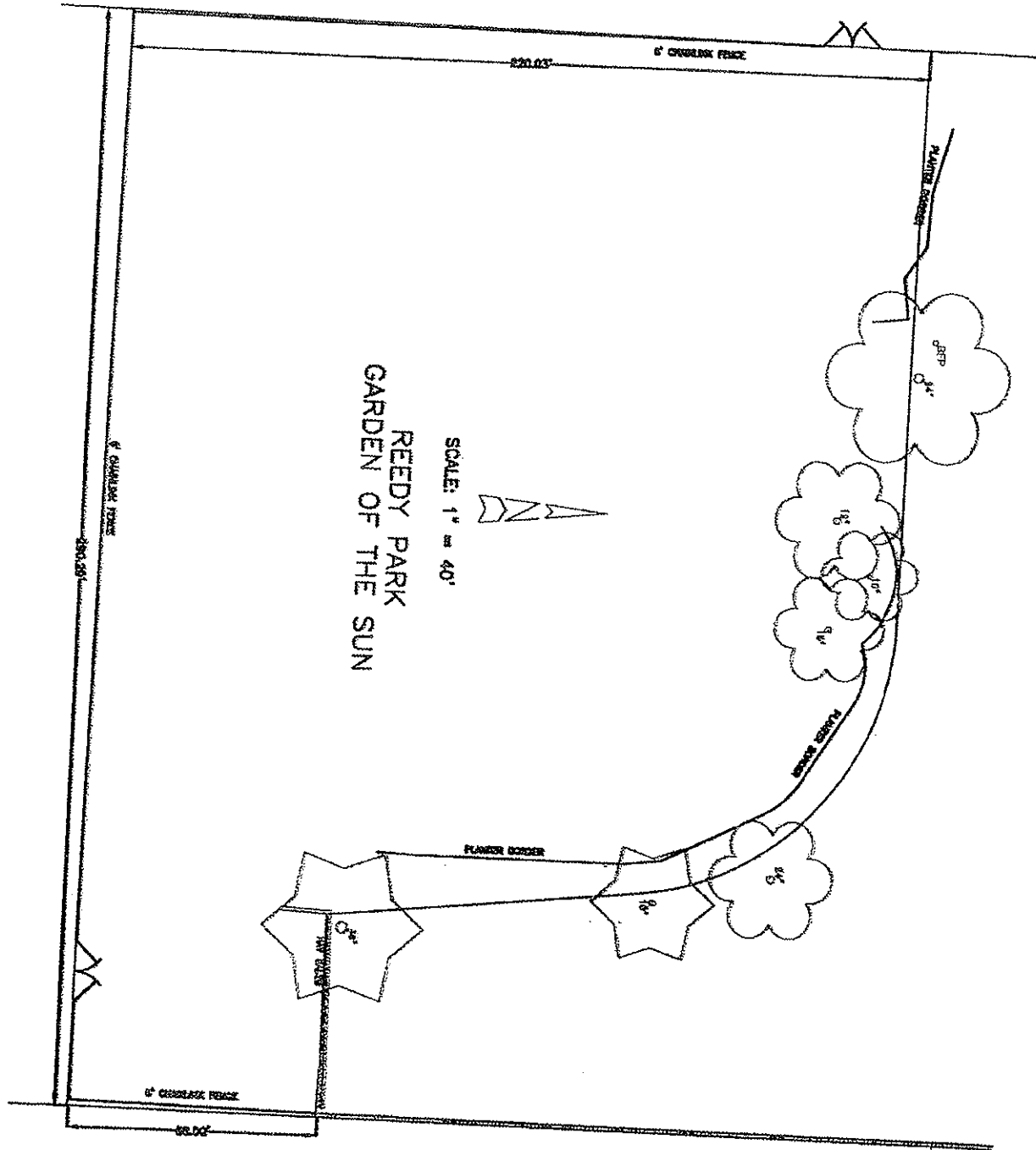


Exhibit E
(Cover Sheet of 3-page Exhibit)

Insurance Requirements

Exhibit E

Insurance Requirements Lease between City of Fresno ("City") and The Regents of the University of California ("Tenant")

The term "Tenant" herein shall mean and refer to Tenant and any of Tenant's subtenants, consultants, subconsultants, contractors and subcontractors; unless the language expressly limits the requirement to carry the insurance coverage to "Tenant" or to "Tenant and any subtenant" under "Minimum Scope of Insurance," below, by either the respective phrase "required only of Tenant" or "required only of Tenant and any subtenant."

Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, which shall include insurance for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations, products and completed operations (including the use of owned and non-owned equipment), damage to rented premises and contractual liability (including, without limitation, indemnity obligations under the Lease). **[Coverage for damage to rented premises is required only of Tenant and any subtenant.]**
2. **If alcoholic beverages are to be sold, served or furnished, COMMERCIAL GENERAL LIABILITY insurance shall be endorsed to include coverage for liquor liability with limits of liability of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury and property damage, or Tenant shall pay for and maintain the most current version of Insurance Services Office (ISO) Liquor Liability Coverage Form CG 00 33, which shall include insurance for "bodily injury," and "property damage" with limits of liability of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury and property damage. [Liquor Liability insurance is required only of Tenant and any subtenant. The responsibility for Liquor Liability insurance may be assigned to Tenant or any subtenant's caterer, concessionaire or vendor.]**
3. The most current version of Insurance Service Office (ISO) Business Auto Coverage Form CA 00 01, which shall include coverage for all owned, scheduled, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto). [Required only in the event Tenant drives or uses any motor vehicle on the Leased Premises.]
4. Workers' Compensation insurance and Employer's Liability Insurance in form of coverage required of Tenant under the Worker's Compensation Insurance and Safety Act of the State of California as amended from time to time.

Minimum Limits of Insurance

Tenant shall maintain limits of liability of not less than:

1. General Liability:

\$1,000,000 per occurrence for bodily injury and property damage, including liquor liability
\$1,000,000 per occurrence for damage to rented premises
\$1,000,000 per occurrence for personal and advertising injury
\$2,000,000 aggregate for products and completed operations
\$2,000,000 general aggregate (applying separately to the work performed when provided by consultant, subconsultant, contractor or subcontractor of Tenant or subtenant)

2. Automobile Liability:

\$1,000,000 per accident for bodily injury and property damage

3. Worker's Compensation and Employer's Liability in an amount covering Tenant's full liability required of Tenant under the Worker's Compensation Insurance and Safety Act of the State of California as amended from time to time.

Umbrella or Excess Insurance

In the event Tenant purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies).

Deductibles and Self-Insured Retentions

Tenant shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and Tenant shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared to, and approved by, the City's Risk Manager or his/her designee. At no time shall City be responsible for the payment of any deductibles or self-insured retentions.

Other Insurance Provisions

The General Liability, Liquor Liability (if applicable) and Automobile Liability insurance policies are to contain, or be endorsed to contain, the following provisions:

1. City, its officers, officials, employees, agents, invitees and volunteers are to be covered as additional insureds.
2. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, officials, employees, agents, invitees and volunteers.

3. Tenant's insurance coverage shall be primary and no contribution shall be required of City.

All policies of insurance required hereunder shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after 30 calendar day written notice by certified mail, return receipt requested, has been given to City. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, Tenant shall furnish City with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for City, Tenant shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than 15 calendar days prior to the expiration date of the expiring policy.

Acceptability of Insurers

All policies of insurance required hereunder shall be placed with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A-VII" in Best's Insurance Rating Guide; or (ii) authorized by City's Risk Manager.

Verification of Coverage

Tenant shall furnish City with all certificate(s) and **applicable endorsements** effecting coverage required hereunder. All certificates and **applicable endorsements** are to be received and approved by the City's Risk Manager or his/her designee prior to City's execution of the Lease and before work commences.

Exhibit F
(Cover Sheet of 5-page Exhibit)

Contractor Requirements Related to Tenant Improvements

Exhibit F

Contractor Requirements Related to Tenant Improvements Lease between City of Fresno and The Regents of the University of California ("UCCE")

THIRD PARTY BENEFICIARY

While the Contractor does not have direct contractual privity with the City of Fresno, as the landlord and owner of the property and any improvements thereon, UCCE and Contractor agree that the City of Fresno is a third-party beneficiary and neither this paragraph (nor any other provision of this Contract necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the City of Fresno.

CONTRACT CHANGE ORDERS

No change order will be issued without the prior written approval from the City of Fresno which affects the work plan for the project, would affect the size or capacity of any project component, cause a significant change in the location of any project component, affect the duration of the project, alter materials used in the project, affects the indemnification or insurance requirements required to be contained below, or affects any City of Fresno - approved green or solar energy system component(s) of the project.

INDEMNIFICATION

(1) To the furthest extent allowed by law including California Civil Code Section 2782, Contractor shall indemnify, hold harmless and defend the City of Fresno and each of its officers, officials, employees, agents, invitees and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by the City of Fresno, Contractor or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of performance of this Contract. Contractor's obligations under the preceding sentence shall apply regardless of whether the City of Fresno or any of its officers, officials, employees, agents, invitees or volunteers are passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused by the active or sole negligence, or the willful misconduct, of the City of Fresno or any of its officers, officials, employees, agents, invitees or volunteers.

(2) Contractor shall defend suits or claims for infringement of patent rights and shall defend and hold the City of Fresno harmless from loss on account thereof.

(3) If Contractor should subcontract all or any portion of the work to be performed under this Contract, Contractor shall require each subcontractor to indemnify, hold harmless and defend the City of Fresno and each of its officers, officials, employees, agents, invitees and volunteers in accordance with the terms of the preceding paragraphs.

(4) Notwithstanding the foregoing paragraphs (1) and (2), Contractor or any subcontractor who is a "design professional" as defined in Section 2782.8 of the California Civil Code and to the extent performing work hereunder in the capacity of a "design professional" shall, in lieu of paragraphs (1) and (2), above, shall indemnify, hold harmless and defend the City of Fresno and each of its officers, officials, employees, agents, invitees and volunteers to the furthest extent allowed by law, from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage), and from any and all claims, demands and actions in law or equity (including reasonable attorney's fees and litigation expenses) that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of the design professional, its principals, officers, employees, agents, invitees or volunteers in the performance of this Contract.

(5) These paragraphs (1) through (5) shall survive termination or expiration of this Contract.

INSURANCE

Throughout the life of this Contract, Contractor shall pay for and maintain in full force and effect all policies of insurance required hereunder with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A- VII" in Best's Insurance Rating Guide, or (ii) authorized by City of Fresno's Risk Manager. The following policies of insurance are required:

(i) COMMERCIAL GENERAL LIABILITY insurance which shall be at least as broad as the most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01 and include insurance for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Contract) with limits of liability of not less than the following:

- \$1,000,000 per occurrence for bodily injury and property damage
- \$1,000,000 per occurrence for personal and advertising injury
- \$2,000,000 per occurrence for products and completed operations
- \$2,000,000 aggregate for products and completed operations
- \$2,000,000 general aggregate applying separately to the work performed under the Contract

(ii) COMMERCIAL AUTOMOBILE LIABILITY insurance which shall be at least as broad as the most current version of Insurance Service Office (ISO) Business Auto Coverage Form CA 00 01, and include coverage for all owned, scheduled, hired, and non-owned automobiles or other licensed vehicles (Code 1 - Any Auto) with limits of liability of not less than \$1,000,000 per accident for bodily injury and property damage.

(iii) WORKERS' COMPENSATION insurance as required under the California Labor Code.

(iv) EMPLOYERS' LIABILITY insurance with limits of liability of not less than \$1,000,000 each accident, \$1,000,000 disease policy limit and \$1,000,000 disease each employee.

(v) BUILDERS RISK (Course of Construction) insurance in an amount equal to the completed value of the project with no coinsurance penalty provisions. **(Only required if the project includes new construction of a building; or renovation of, or addition to, an existing building.)** (Applicable only to those responsible for the construction, alteration or renovation.)

(vi) Professional Liability (Errors and Omissions) insurance appropriate to the respective person's profession (applicable only to those who are performing work hereunder in the capacity of a "design professional" as defined in Section 2782.8 of the California Civil Code). The limits of liability shall be no less than \$1,000,000 per claim/occurrence and \$2,000,000 policy aggregate. Coverage shall be endorsed to include contractual liability. If the policy is written on a claims-made form:

- The "Retro Date" must be shown, and must be before the effective date of the Contract or the commencement of work.
- Insurance must be maintained and evidence of insurance must be provided for at least 5 years after any expiration or termination of the Contract or, in the alternative, the policy shall be endorsed to provide not less than a 5-year discovery period.
- If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a "Retro Date" prior to the respective effective date of the Contract or commencement of work, must purchase "extended reporting" coverage for a minimum of 5 years following the expiration or termination of the Contract.
- A copy of the claims reporting requirements must be submitted to the City of Fresno for review.
- These requirements shall survive expiration or termination of the Contract.

In the event Contractor purchases an Umbrella or Excess insurance policy(ies) to meet the minimum limits of insurance set forth above, this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies).

Contractor shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and Contractor shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared to, and approved by, the City of Fresno's Risk Manager or his/her designee. At no time shall the City of Fresno be responsible for the payment of any deductibles or self-insured retentions.

All policies of insurance required hereunder shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after 30 calendar day written notice has been given to the City of Fresno. Upon issuance by the insurer,

broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, Contractor shall furnish the City of Fresno with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for UCCE, Contractor shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than 15 calendar days prior to the expiration date of the expiring policy.

The General Liability and Automobile Liability insurance policies shall be written on an occurrence form and shall name the City of Fresno, its officers, officials, agents, employees, invitees and volunteers as an additional insured. Such policy(ies) of insurance shall be endorsed so Contractor's insurance shall be primary and no contribution shall be required of the City of Fresno. The coverage shall contain no special limitations on the scope of protection afforded to the City of Fresno, its officers, officials, employees, agents, invitees and volunteers. The Builders Risk (Course of Construction) insurance policy shall be endorsed to name the City of Fresno as a named insured. Any Workers' Compensation insurance policy shall contain a waiver of subrogation as to the City of Fresno, its officers, officials, agents, employees, invitees and volunteers.

Contractor shall furnish the City of Fresno with all certificate(s) and applicable endorsements effecting coverage required hereunder. **All certificates and applicable endorsements are to be received and approved by the City of Fresno's Risk Manager or his/her designee before work commences.** Upon request of the City of Fresno, Contractor shall immediately furnish the City of Fresno with a complete copy of any insurance policy required under this Contract, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Contract.

If at any time during the life of the Contract or any extension, Contractor or any of its subcontractors fail to maintain any required insurance in full force and effect, all work under this Contract shall be discontinued immediately, and all payments due or that become due to Contractor shall be withheld until notice is received by the City of Fresno that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to the City of Fresno. Any failure to maintain the required insurance shall be sufficient cause for UCCE to terminate this Contract. No action taken by UCCE or the City of Fresno hereunder shall in any way relieve Contractor of its responsibilities under this Contract.

The fact that insurance is obtained by Contractor shall not be deemed to release or diminish the liability of Contractor, including, without limitation, liability under the indemnity provisions of this Contract. The duty to indemnify the City of Fresno shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Contractor. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Contractor, its principals, officers, agents, employees, persons under the supervision of Contractor, vendors, suppliers, invitees, consultants, subconsultants, subcontractors, or anyone employed directly or indirectly by any of them.

In the event of a partial or total destruction by the perils insured against of any or all of the work and/or materials herein provided for at any time prior to the final completion of the Contract and the final acceptance by UCCE of the work or materials to be performed or supplied thereunder, the Contractor shall promptly reconstruct, repair, replace, or restore all work or materials so destroyed or injured at his/her sole cost and expense. Nothing herein provided for shall in any way excuse the Contractor or his/her insurance company from the obligation of

furnishing all the required materials and completing the work in full compliance with the terms of the Contract.

If Contractor should subcontract all or any portion of the services to be performed under this Contract, Contractor shall require each subcontractor to provide insurance protection in favor of the City of Fresno, its officers, officials, employees, agents, invitees and volunteers in accordance with the terms of each of the preceding paragraphs, except that the subcontractors' certificates and endorsements shall be on file with Contractor and the City of Fresno prior to the commencement of any work by the subcontractor.

Waiver of Subrogation: Contractor and its insurers hereby waive all rights of recovery against the City of Fresno and its officers, officials, employees, agents, invitees and volunteers, on account of injury, loss by or damage to the Contractor or any of its principals, officers, employees, agents, consultants, subconsultants, contractors, subcontractors, vendors, suppliers, invitees or volunteers, or its property or the property of others under its care, custody and control. Contractor shall give notice to its insurers that this waiver of subrogation is contained in this Contract. This requirement shall survive termination or expiration of this Contract.

Contractor's Volunteers: In the event Contractor utilizes any volunteers in the performance of the work, Contractor shall ensure that there is sufficient insurance coverage for work performed by its volunteers.

AGENDA ITEM NO. 9:00am E
COUNCIL MEETING 6/16/2011
APPROVED BY _____

DEPARTMENT DIRECTOR _____

CITY MANAGER 

June 16, 2011

FROM: BRUCE A. RUDD, Interim Director/Assistant City Manager
Parks, After School, Recreation and Community Services

SUBJECT: APPROVE THE CITY MANAGER OR DESIGNEE TO EXECUTE A 10-YEAR LEASE AGREEMENT WITH THE UNIVERSITY OF CALIFORNIA'S GARDEN OF THE SUN TO OPERATE PROGRAMMING ON A 1.2 ACRE SITE LOCATED ON THE SOUTHERN PORTION OF REEDY PARK

RECOMMENDATION

It is recommended that the City Council authorize the City Manager or designee to execute a ten (10) year lease agreement with the University of California's Garden of the Sun.

EXECUTIVE SUMMARY

Over the last eighteen years, the University of California's Garden of the Sun (GOS) has operated a Master Gardner program on a 1.2 acre site located on the southern portion of Reedy Park. The GOS had previously leased the property from the Discovery Center, who did not have the right to sublease the property under the terms and conditions of their existing lease.

The GOS will provide free programming and other related services in exchange for monthly lease payments, but is required to fund the cost of operations; including all utilities or any future improvements, and the construction of a fence that is needed to separate Reedy Park from the GOS location. In order to measure the benefit to the community, the GOS will provide a written report to the City on or before November 1st of each year that will include the number of programs and events held over the previous year and the number of participants.

BACKGROUND

For more than eighteen years, the Garden of the Sun (GOS) has occupied approximately 1.2 acres located at the southern end of what is known as Reedy Park. During this period, the GOS entered into a lease with the Discovery Center for the use of the 1.2 acre site. The need for a separate lease agreement with the GOS is predicated on the fact that the Discovery Center's current lease does not provide for any subleasing of the City's property. The Garden of the Sun is operated through the University of California Master Gardener Program, which provides the public with information about home horticulture, pest identification, landscape management, environmental and other natural resource issues.

The term of the lease agreement is ten (10) years and commences on May 26, 2011, and expires on May 25, 2021. The GOS has agreed to pay for all utilities including, but not limited to: water, garbage, electricity and telephone. The GOS has also agreed to fund the cost of constructing a fence to separate the parcel from Reedy Park. The GOS is also responsible for ensuring that the property is secure and well-maintained.

During the term of the lease, the GOS will provide programming to the community that is consistent with the University of California's Master Gardening Program. In lieu of lease payments, the GOS will provide these services to the community for free or at a nominal cost.

Presented to City Council

Date 6/16/11

Disposition Approved

Operations will be, at a minimum, three days per week, four hours a day. Currently, the GOS operates from 9:00 a.m. to 1:00 p.m. on Monday, Wednesday, and Friday, and most Saturdays; but by appointment only. In order to quantify the level of benefit being provided to the community, the GOS is required to submit a report, on or before November 1st, outlining the activities and programming related to the use of the leased property.

Fiscal Impact

It is anticipated that the City will save approximately \$3,000 annually as the cost of water will be paid for by the GOS.

Attachment: Lease Agreement